

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JOHN T. ROSS,

Plaintiff,

vs -

PHILIP MORRIS COMPANY, LTD.,
a corporation,

Defendant.

No. 9494

TRANSCRIPT OF PROCEEDINGS

July 5, 1962

Volume 11

BERYL L. FINLEY

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UNITED STATES DISTRICT COURT

KANSAS CITY 6, MO.

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DR. G. O. PROUD,

called as a witness on behalf of the defendant, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. HARDY:

Q Will you state your name, please, sir.

A G. O. Proud.

Q And where do you live?

A [DELETED]

Q And what is your profession?

A Physician, teacher, scientist.

Q Let me ask you, Doctor, what was your education and where did you receive it?

A I received my Bachelor of Arts degree from the University of Missouri in 1935, Doctor of Medicine degree from Washington University in St. Louis in 1939, served a year of rotating internship at St. Luke's Hospital in Kansas City, Missouri, studied for one year in basic sciences of the specialty of otolaryngology at Washington University in St. Louis.

Q About when was that?

A That was about 1940 to '41. Served as assistant resident in otolaryngology at Barnes Hospital and St. Louis Children's Hospital in St. Louis from '41 to '42, served as senior resident in the specialty of otolaryngology in

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those same institutions from 1942 to 1943, was certified by the American Board of Otolaryngology in June of 1943 following examination, spent three years with the United States Naval Reserve as Medical Officer until 19 --

Q Wait a minute, when was that that you --

A 1943 until 1946 was the Naval career.

Q In the Naval Reserve were you specializing in otolaryngology then?

A Yes, sir, except for a few months' temporary detached duty with the Marine Corps. The rest was all spent with otolaryngology.

End T22
(13 pgs)

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- Q. Was that in this country or out of this country?
- A. Well, some of the duty was in this country and some was in the Pacific Theater.
- Q. All right. Where in the Pacific Theater?
- A. Iwo Jima.
- Q. After you got out of the Naval Reserve in 1946, what did you do?
- A. I returned to Washington University in St. Louis, where I became a full time instructor in the specialty of otolaryngology, at Washington University.
- Q. Incidentally, what was your first period of instruction there, being on the staff?
- A. 1946 to 1947.
- Q. I mean before that, the earlier time you mentioned that you were at Washington?
- A. During my residency period?
- Q. Yes, I guess that is what it was.
- A. 1940 to 1943.
- Q. All right, sir. Now, you were there again as a full time instructor in '46 to '47?
- A. Yes, sir.
- Q. And what did you do after you finished that year?
- A. I went into the private practice of the specialty part time in the City of St. Louis, but remained as a part time faculty member at the university for a period of

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one year.

Q. And then what did you do after that?

A. Returned to the Department of Otolaryngology at Washington University as instructor full time again.

Q. And how long did you continue there?

A. I remained there until July 1, 1950, at which time I took the chair at the University of Kansas as associate professor and chairman of the Department of Otolaryngology.

Q. And have you continued from 1950 to date as professor of Otolaryngology?

A. My original appointment was as associate professor. I was promoted to full professor two years after engagement at this institution, that university, began and remained as professor and chairman of the department until now.

Q. You started though as chairman of the department in 1950?

A. I did.

Q. And became full professor and still chairman of the department about 1952?

A. Correct.

Q. And are you still professor of otolaryngology and chairman of the department of otolaryngology?

A. The specialty carries this name in other institutions on some occasions but at the University of Kansas it is

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T23-73w

known as otolaryngology and rhinology.

Q. I forget what rhinology means. What does that mean?

A. Nose.

Q. And "oto" is ear?

A. Yes.

Q. And laryngology is throat?

A. Yes, sir.

Q. Ear, nose and throat?

A. Yes, sir.

Q. All right. Now, of what societies--first let me ask you, in connection with your work at the University of Kansas Medical Center--at the University of Kansas School of Medicine, do you have a clinical practice in otolaryngology, or have you had a clinical practice in otolaryngology at the Kansas Medical Center here in Johnson County, Kansas?

A. Yes, sir.

Q. And how long have you been engaged in the clinical practice of otolaryngology there?

A. It was 12 years the first of this month.

Q. And did you have a clinical practice in St. Louis other than the one year?

A. Yes, sir.

Q. All right. How many years of clinical practice of otolaryngology did you have in St. Louis?

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A. Four.

Q. That is a total of 16 in civilian life, 16 years, 12 here and four there?

A. 16 years, yes, sir.

Q. And when you were in the service did you have a rather controlled group of patients there?

A. Well, yes, sir. Most of the time that I was state-side I did. I was in charge of an ear, nose and throat section of a Naval hospital in Corpus Christi, Texas, for over a year.

Q. Now, tell the jury what medical societies or associations you are a member of.

A. A member of the Wyandotte County Medical Society, the Kansas State Medical Society, the American Medical Association. I am a Diplomate of the American Board of Otolaryngology, Fellow of the American Academy of Otolaryngology, a Member of the Laryngological, Rhinological and Otolaryngological Society, which is usually known as the Triologic Society, and I am a past president of this organization.

Q. That is of the Triological?

A. Yes, sir. I am a Member of the American Otolaryngological Society, a Member of the Otosclerosis Study Group.

Q. Now, what positions have you held or do you hold with regard to being on any editorial boards for medical

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journals?

A. I am on the editorial board of the Archives of Otolaryngology.

Q. And is that a publication within your specialty?

A. Publication sponsored by the American Medical Association for this particular specialty.

Q. Doctor, have you had any position on a committee of the American Academy of Ophthalmology and Otolaryngology?

A. Yes, sir, I am chairman of the Research Committee for this activity.

Q. And how long have you held that position?

A. For two years. My term will expire this autumn.

Q. Now, Doctor, since this lawsuit was pending and in 1958, did you examine Mr. John Ross on behalf of the defendant to determine if his cancer had been stopped or removed?

A. Yes, sir, I did.

Q. Have you studied and become familiar with the medical records of the Mayo Clinic and with the surgical specimens that you see, the exhibits that are on the easel there?

A. I have. I am not thoroughly familiar with all of the records from the Mayo Clinic, but I have read them. It would take considerable study for this.

Q. Are you familiar with it?

A. I have reviewed them, yes, sir.

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Q. And have you examined the photographs of specimens which this Exhibit U here is an enlargement of, showing the inside of Mr. Ross's larynx?

A. Yes, sir.

Q. And have you also studied the specimen which is Exhibit R, which is the closed specimen on the right there?

A. Yes, sir.

Q. I ask you, Doctor, in connection with your clinical practice, have you had experience with cancers of the pyriform fossa and of the larynx and esophagus and other sites in this area?

A. Yes, sir.

Q. Would you tell the jury what kind of a cancer Mr. John Ross had.

A. A squamous cell carcinoma.

Q. Located where?

A. In the lateral wall of the pyriform fossa and apparently involving the medial wall. I haven't seen the actual pathological specimen, so that portion of it regarding its inferior extent to the level of the beginning of the esophagus I take by word of others. It is impossible to say that from this photograph.

Q. Now, from this photograph can you state as to whether or not the diagnosis you just gave about carcinoma of the pyriform fossa, does that appear from this

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photograph?

A. Yes, sir.

Q. Now, I will ask you whether or not, either from your observation or from observation of the photograph, the open larynx, state whether or not the inside of the larynx cavity was cancerous or normal?

A. Normal, sir.

Q. Now, when you speak of cancer of the larynx, are you referring to a general area or inside the cavity of the airway of the larynx?

A. I am referring to the walls of the cavity of the interior of the larynx, yes.

Q. Interior of the larynx?

A. Yes, sir.

Q. Was this cancer larynx cancer?

A. No, sir, pyriform fossa cancer.

Q. Now, Doctor, do you know the cause or causes of cancer of the pyriform fossa?

A. No, sir, neither here nor elsewhere.

Q. What do you mean, neither here nor elsewhere?

A. I don't think anyone knows the cause of cancer, Counselor.

Q. All right. Now, I would like to ask you a little bit about the operation of this mechanism in the throat, which involves the pyriform fossa and the respiration,

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T23-78w

swallowing. Will you tell the jury whether or not the pyriform fossa is a part of the food tract or of the respiratory tract?

A. Pyriform fossa is a part of the food tract.

Q. Does it have any function to perform this respiration, breathing and that sort of thing?

End 23

A. No, sir.

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leg 24
24-134

Q Is the pyriform fossa normally, in the absence of swallowing or phonating, is it open or closed?

A It is a closed structure.

Q Now, tell the jury on what occasions and with what movements or what functions the pyriform fossa is open.

A The pyriform fossa becomes open during the act of phonation, the vocal cords move together, and this causes, therefore, the medial wall of the pyriform fossa to move forward medially and the space opens; also during swallowing the bolus of the food, half the food or the liquid is allowed to go down into the upper esophagus.

Q Why do you say half?

A The bolus is divided in half, mostly by action of the base of the tongue, which splits the incoming food or fluid stream into approximately equal halves, half will go down the right side of the pyriform fossa and half will go down the left side.

Q What I am getting at, it all eventually goes down the pyriform fossa?

A Yes, sir.

Q I didn't know what you meant by half. Does the pyriform fossa have any function other than forming a trough or pathway for food and drink to go down to the mouth of the esophagus?

A No, sir.

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24-mf35

Q Except when you are phonating, and by phonating you mean talking?

A Yes, sir.

Q Or speaking?

A Making vocal sounds.

Q Making vocal sounds?

A Yes, sir.

Q Except when you are phonating or swallowing, is the pyriform fossa always closed?

A Yes, sir.

Q And is it possible for inhaled smoke and air to get down into the pyriform fossa?

A No, sir.

Q What about the situation, Doctor, where you puff on a cigarette, suck in on a cigarette, and then you get some in your mouth and before you inhale it, is that smoke going to go down into the pyriform fossa?

A I am afraid I didn't quite get your question. Would you restate it, counselor? I'm sorry.

Q Yes. Before inhalation you suck on a cigarette, and then after you've got a mouthful, you inhale, or a partial mouthful, whatever the individual wants. What I am asking is, when you suck on a cigarette and before you inhale, before you take a breath in, does that smoke get down into the pyriform fossa?

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T24-mf36

A No. Of course, not all smokers inhale, but even if the smoker does inhale, the smoke remains in the mouth until he inhales, the air stream will carry it down then.

Q Why do you say that? What is there to keep the smoke from -- when you suck it in -- going on down and whirling and eddying around in the pyriform fossa?

A Oh, there are probably a number of mechanisms. For one thing, smoke is lighter than air, as one knows if he sees any chimney, when it is active, and secondly, there is nothing to carry it down, other than negative pressure in the trachea. This is the only thing that would carry it down, into the larynx.

Q Into the larynx?

A Yes, sir.

Q If it did go down to the level of the larynx, pyriform fossa, if it did go down there, could it get in?

A Into the larynx?

Q No, into the pyriform fossa?

A No, sir.

Q Why?

A Because it is a closed structure, and there is nothing to pull it down, and it couldn't pull it down anyhow, because it is a closed space, it is normally a closed space at all times.

Q Doctor, from your mouth on down to your larynx, before

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f24-mf37

you suck this smoke in, is there or is there not air?

A Yes.

Q And in order to displace that air and make room for the smoke to get down to the larynx, what do you have to do?

A There has to be negative pressure in the trachea, and inhaling effort, to pull it down into the larynx.

Q Where is that inhaling effort initiated from?

A It is initiated from a lot of areas, the descent of the diaphragm and intercostal muscles that play on the rib cage to expand the chest and lungs, to create negative pressure in the trachea and this pulls the air in.

Q Doctor, if you take a drink of water or a mouthful of food, let's say a drink of water, and hold it in your mouth, and then breathe through your nose deeply, inhale and exhale, through your nose, does that keep your larynx wide open, when you are inhaling?

A Well, if the water is held in the forward part of the mouth, yes, the larynx would be open.

Q All right. Now, no swallowing; I am talking about inhaling.

A Yes.

Q So if you put water in your mouth, like take a drink of water, hold it in your mouth and -- (demonstrating), can you breathe?

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A Yes, sir.

T23-mf38

Q And does that air go down into your lungs?

A Yes, sir.

Q And does the water go down into your lungs?

A Oh, no, sir.

Q Where is the water?

A Held in the mouth.

Q Now, let's say that you take a puff off a cigarette and you don't inhale through your mouth, you just close your mouth.

A Yes, sir.

Q And that smoke is in your mouth, is that correct?

A Yes, sir.

Q Now, can you do that, have your mouth full of smoke (demonstrating), breathe in deeply through your nose, exhale through your nose repeatedly without ever taking in any smoke to your larynx?

A Yes, sir.

Q Or without ever breathing any out?

A Yes, sir.

Q And can you do that a number of times and then open your mouth and let the smoke out that has never been out of your mouth?

A Yes, sir.

Q Doctor, in view of your testimony that smoke does not contact the pyriform fossa, I would like to ask you to

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T24-mf39

assume with me that John Ross who had this cancer confined in the pyriform fossa, smoked heavily, cigarettes, for a period from 1932, 1933, up to 1952, when he had this cancer removed, that he smoked two packs or more and sometimes as high as three and four packs in later years, a day, do you have an opinion to a reasonable medical probability as to whether cigarette smoking was the cause or a cause of John Ross's cancer of the pyriform fossa?

A I do.

Q What is your opinion?

A That it did not cause it.

Q And you base that on what you have already told us or is there something else?

A On what I have already told you.

Q Now, Doctor, insofar as cancer of the pyriform fossa is concerned, do you have an opinion as to whether there is any connection whatsoever between smoking and cancer of the pyriform fossa?

A I do.

Q What is that opinion?

A There is no connection.

Q Now, Doctor, with regard to cancer of the larynx, inside of the larynx, in the laryngeal airway, all the smoke goes down in through the trachea and into the lungs

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T24-mf40

when you inhale it, is that correct?

A Yes, sir.

Q Do you have an opinion to a reasonable medical probability as to whether or not cancer of the inside of the larynx cavity is or is not caused or contributed to by smoking cigarettes?

A I have an opinion, yes, sir.

Q What is it?

A I say that there is no connection.

Q All right. Do you consider in the larynx, do you consider that smoking, that is, inside the larynx, may be a possible cause?

A Anything that contacts the interior of the larynx has to be considered a possible contributing factor.

Q It is just your opinion that it does not?

A That is right.

Q Now, Doctor, with regard to your experience, your clinical experience, approximately how many cases of cancer of the pyriform fossa have you seen clinically?

A Well, it is an unusual condition. I have seen 30, plus, in excess of 30.

Q Clinical?

A Yes, sir.

Q Now, you say it is an unusual condition?

A Yes, sir.

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T24-mf41

Q How many cases of cancer of the inside of the larynx would you estimate you have seen?

A In the neighborhood of 300-some.

Q Now, let's go with regard to pyriform fossa, would you tell the Court and jury whether or not in your observation of your pyriform fossa cases you have seen -- strike -- whether or not in the observation of your pyriform fossa cases, you can tell us approximately the percentage of your pyriform fossa cases who smoked?

A Better than 50 percent, 50 to 75, somewhere in that area.

Q Do you observe any higher incidence in your pyriform fossa cases --

A Were you including just cigarette smokers or all smokers?

Q Well, I was talking about cigarette smokers.

A Then this holds, 50 to 75 percent.

Q Did you notice any greater percentage of smokers among your pyriform fossa cases than you notice among your cases that are not cancer; in other words, people in general?

A No, sir.

Q Population in general.

A No, sir.

Q As you have observed it. Now, would you tell the jury in your pyriform fossa cases, what percentage of those patients are heavy drinkers of alcoholic beverages?

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T24-mf42

A Well, I would have to say pretty close to a hundred percent. If I have ever seen one who was not a heavy drinker, I simply can't remember.

Q Now, with regard to your larynx cases, what is the percentage as best you can give it with regard to --

A Well --

Q Wait until I ask my question. I am going to first ask you in larynx about alcohol rather than smoking. About what percentage of your larynx cancer patients were heavy alcoholic drinkers?

A About 40 percent.

Q And about what percentage of your larynx cancer patients and again I am speaking also of the inside of the larynx cavity -- were cigarette smokers?

A About 50 to 75 percent.

Q All right, Doctor, insofar as cancer of the pyriform fossa is concerned, you have stated that you don't know the cause. I want to ask you what, if anything, you consider as suspects or possible factors that should be investigated?

A I think that alcohol is one possible suspect.

Q Incidentally, let me stop you on alcohol just a minute. Does the fact that in one hundred percent of your pyriform fossa cases have been heavy drinkers of alcohol, does that cause you to feel that alcohol is the cause?

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T24-nf43

A No, sir.

Q Why?

A Oh, because alcohol can lead to other things, such as nutritional deficiency, and excess of this kind can -- a person prone to excess of one kind may have excesses of another kind, he may have dietary deficiency. There are many other factors.

Q In addition to alcohol, are there any other that you consider suspects, in pyriform fossa --

A Nutritional deficiency, syphilis, highly spiced foods.

Q Does that fairly well cover your suspects?

A Yes, sir.

MR. HARDY: I believe that is all. You may inquire.

CROSS EXAMINATION

BY MR. FIELD:

Q Doctor, while on that subject, let's stay on it. I noticed some hesitancy, and perhaps it was a -- maybe I just imagined it, on this subject when he asked you about -- you said, "Well, I would say I had 50 to 75 percent, somewhere in there, of cigarette smokers on my cases of cancer of the pyriform sinus," and I noticed you said something like "You don't mean all forms of tobacco?" and he said no. Apparently some of your people were not cigarette smokers but smoked cigars or pipes?

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T24-mf44

A Yes, sir.

Q So when you consider all forms of tobacco, what percentage had cancer -- I mean what percentage of smokers were there in your pyriform cancers?

A Perhaps 80 percent.

Q 80 percent of your pyriform cancer cases were smokers?

A At the highest.

Q Yes.

A 75 to 80.

Q So you put on another five percent?

A Yes, sir.

MR. HARDY: Excuse me, did you say between 50 and 80?

MR. FIELD: I don't think you ought to lead him.

Q You said the outermost limits now were 80 percent, didn't you?

A Yes, sir.

MR. HARDY: Just a moment, if the Court please.

MR. FIELD: Your Honor --

MR. HARDY: Will you keep still just a moment? When the doctor was answering, Mr. Field started talking so I couldn't hear the doctor's answer --

MR. FIELD: You shouldn't lead him.

MR. HARDY: I thought he said 50 to 80 percent. I thought I was entitled to know, and that is the reason

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I did what I did, and I intend to do that some more, Mr. Field, if you interrupt me.

THE COURT: What was the doctor's answer?

MR. FIELD: Would you read the answer back?

(Record read by the reporter as follows:

"QUESTION: So when you consider all forms of tobacco, what percentage had cancer -- I mean what percentage of smokers were there in your pyriform cancers?

"ANSWER: Perhaps 80 percent.

"QUESTION: 80percent of your pyriform cancer cases were smokers?

"ANSWER: At the highest.

"QUESTION: Yes.

"ANSWER: 75 to 80.

"QUESTION: So you put on another five percent?

"ANSWER: Yes, sir.")

MR. HARDY: Did you say 75 to 80?

THE WITNESS: I said 75 to 80 high.

MR. HARDY: Did you not say 50 to 80?

MR. FIELD: I don't think he should lead the witness.

THE COURT: No.

MR. FIELD: It can be ascertained in the record.

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T24-mf46

Q So the outermost limits are 80 Percent, aren't they?

MR. HARDY: I want to know what the doctor said.

Q Uppermost limits?

A Yes.

MR. HARDY: What he said was 50 to 80 percent.

THE COURT: No, I think what he said was 75 to 80 percent. He was speaking of, he said, upper limits.

MR. HARDY: Why don't you ask the doctor what he said? I heard him and I want to be sure the reporter heard it right, because Mr. Field was interrupting.

MR. FIELD: He said --

MR. HARDY: If you ask the doctor what he said, he probably knows better than any of us.

THE COURT: Well, Doctor, is the record correct as read back?

THE WITNESS: To tell the truth, I got so interested in the by-play, I have forgotten -- I'm lost.

MR. HARDY: I heard what was said. The record isn't right.

THE COURT: All right, let Mr. Field continue.

END

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MR. FIELD: You can cover it on redirect. You can get back on that --

MR. HARDY: You quit interrupting him, because you fouled up the record. I am going to jump right astraddle of you when you foul up the record.

THE COURT: Let's proceed.

MR. FIELD: Would you kindly read back the questions and answers?

You listen to them, Doctor. If he makes an objection, try not to listen to him. Just listen to the record.

THE WITNESS: Yes, sir.

(Thereupon the record was read by the reporter as follows:

"QUESTION: So when you consider all forms of tobacco, what percentage had cancer -- I mean what percentage of smokers were there in your pyriform cancers?

"ANSWER: Perhaps 80 per cent.

"QUESTION: Eighty per cent of your pyriform cancer cases were smokers?

"ANSWER: At the highest.

"QUESTION: Yes.

"ANSWER: Seventy-five to eighty.

"QUESTION: So you put on another five per cent?

"ANSWER: Yes, sir.

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"MR. HARDY: Excuse me, did you say between 50 and 80?"

MR. FIELD: Let's don't have that. Just put it back in the box.

(Reporter continuing to read:

"MR. FIELD: I don't think you ought to lead him.

"QUESTION: You said the outermost limits now were 80 per cent, didn't you?

"ANSWER: Yes, sir.")

MR. FIELD: That is all. That is all I need.

Q (By Mr. Field) All right, now, is that correct, Doctor?

A Yes, sir.

Q That the outermost limits, considering all forms of tobacco, in your pyriform cancer cases is 80 per cent smoked, is that correct?

A Eighty per cent was the upper limit, yes, sir.

Q Yes, sir, upper limit?

A Yes, sir.

Q All right. Now, that leaves 20 per cent, doesn't it?

A Yes, sir.

Q Now, of that 20 per cent, how many were women?

A We are talking about pyriform fossa?

Q Yes, sir. That is all I have talked about so far.

A It is a very low percentage.

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T25s76

Q Well, what --

A Perhaps two per cent.

Q You mean of the remaining 20 per cent only two were women, two per cent were women?

A I think that out of this whole total number of cases of pyriform fossa cancer, there were only a total of two women, perhaps, in the whole --

Q Oh, I see. Were they nonsmokers?

A I can't recall this, sir, offhand.

Q Well, if you can't recall whether the women in your pyriform cancer cases were nonsmokers or smokers, how do you recall that the men were?

A I don't draw any line between men and women. I was interested in smoking and not smoking and not sex at that point, I mean not the sex of the patient.

Q Yes, I understand that. Well, how do you know -- why do you say that you don't know whether the women were smokers or nonsmokers?

A Sorry, counselor, I just don't know.

Q O.K. In any event, using your uppermost limits -- and why is it you are having to put a range on this, because you no longer have any statistics or they are not written down?

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A I haven't run down the statistics for all of this, no, sir. I just know that at times in the past when we ran

T25s77

checks, in moving along with the series and we quizzed them as to smoking and nonsmoking, that the great majority of them were smokers.

Q The great majority were smokers?

A Yes, sir.

Q Well, but you have talked now about the -- you gave your estimate of all the pyriform cancer cases you have had in your entire practice as being 30-plus?

A Yes.

Q Now, when you say this series, that embraces your whole practice, doesn't it?

A Yes, sir.

Q Well, are you just kind of making an estimate out of your mind of all the pyriform cancer cases you have had how many were smokers and nonsmokers?

A No, sir.

Q Did you write it down?

A I have, in the past, yes, sir.

Q Have you ever reviewed that since you wrote it down?

A I have reviewed it on several occasions in the past, yes, sir.

Q When last?

A The last time approximately, oh, a year ago.

Q And it is still in such a broad spectrum as 50 to 80 per cent?

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T25s78

A Yes, when reviewing all of these cases of cancer, whether it be larynx or a pyriform fossa, we quiz all of these patients as to smoking and nonsmoking. It leaves a large number of patients to be reviewed, and I don't keep identical statistics for each one and bring them all together once a year.

Q Well, that is what I thought.

A No, sir.

Q And that is why I wondered how you were able -- you told Hardy that you had 30-plus pyriform cancer cases in your entire practice to date, and how are you able to -- unless you wrote it down and reviewed that record, how are you able to say it was 50 to 80 per cent?

A I say we have written it down and reviewed it from time to time.

Q So, anyway, it is 50 to 80 per cent. And that is when you are talking about cigarettes, it is 50 to 75 per cent, but when you are talking about all forms it is five per cent more?

A Yes, sir.

Q What?

A Because a few of them were cigar or pipe smokers.

Q Yes, 80 per cent is the upper limit. That means 20 per cent were nonsmokers?

A Yes, sir.

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T25s79

Q And your experience has been 30 pyriform fossa cancer cases?

A Yes.

Q Do you know how many individuals that is that were non-smokers at 20 per cent of 30? That is two and a half, isn't it? What?

A (No answer.)

Q So out of your entire experience --

MR. HARDY: Excuse me. I think mathematically if you take 20 times 30 you get six rather than two and a half.

MR. FIELD: Well, the doctor nodded yes. I will admit my mathematics are off, but --

MR. HARDY: The doctor was not --

MR. FIELD: The doctor was not what?

MR. HARDY: Not working it out, I don't think.

MR. FIELD: I see.

Q (By Mr. Field) So six of them, Doctor, now that counsel has corrected your mathematics and mine, six of them were nonsmokers of all the pyriform cancer cases you have seen, is that right?

A Perhaps.

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Q Did you say that one of the reasons why inhaled smoke can't get down into the pyriform fossa is because smoke is lighter than air and rises, as anyone knows who has

T25s80

seen smoke come out of a chimney?

A I said this is only one of the factors.

Q But you are under the impression that tobacco smoke is lighter than air?

A I would think so, yes, sir.

Q Because you see smoke rise out of the chimney?

A Yes.

Q Doctor, isn't the reason that smoke rises out of the chimney in the air not because it is lighter than air but because it is being heated underneath and rises by convection currents? Would you answer so she can get it in the record? See, she can't see you. She has to tend to her machine.

A Answer what, sir?

Q Instead of shaking your head, would you phonate or speak?

A Open my pyriform fossa?

Q Yes, indeed.

A All right.

Q And open your larynx and speak so it gets in the record, that is all I am saying. The fact is smoke isn't lighter than air when you stop to think about it, is it?

A I think that it probably is.

Q Really? Well, I thought you thought for a while, you said, the reason it is lighter than air because it rises from a chimney.

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T25s81

A Well, when one takes a puff on a cigarette and blows it this way, the smoke invariably rises and there is nothing firing it up underneath at that time, counselor.

Q Is that right? Now, you think smoke does rise, now?

A I think so.

Q O.K. But if you are wrong in that, that smoke doesn't rise and smoke is heavier than air, if you are wrong in that, then, of course, the smoke could filter down in that area, couldn't it?

A Into the pyriform fossa?

Q I mean filter down in the throat, down in the depths of the throat?

A Perhaps.

Q Yes. Now, have you ever performed any tests with respect to whether or not smoke gets into the pyriform fossa, tobacco smoke?

A No, sir.

Q What about exhaling? In your opinion, doesn't some smoke get into the pyriform fossa when you exhale?

A I have done no test to determine this. I would think it very doubtful.

Q Well, but didn't you say on direct examination that in order for the air in that area, the pyriform fossa, to be displaced there would have to be negative pressure in the area of the trachea that pulls the air down?

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T25s82

A I said nothing about air in the pyriform fossa being displaced, counselor.

Q All right. Do you have an opinion whether or not when one exhales that smoke gets into the pyriform sinus?

A I would certainly think not.

Q Why?

A Well, when one exhales, the larynx is open, which means the pyriform sinus is closed. Smoke is going to -- and the air are going to follow the path of least resistance and come out from the larynx out the mouth.

Q If you -- And you say you have never made any --

A No, sir.

Q -- scientific tests --

A No, sir.

Q -- one way or the other to determine whether the pyriform fossa is open or closed when one smokes, have you?

A No, sir.

Q Would you change your opinion on whether or not you would then suspect tobacco smoke as a cause of cancer in the pyriform sinus if it could be demonstrated to you that smoke does get into the pyriform sinus?

A Would you mind restating the question, counselor?

MR. FIELD: Yes, It perhaps was a little involved. Let's have her read it and we will both check ourselves.

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(Thereupon the last question was read by the reporter as follows: "QUESTION: Would you change your opinion on whether or not you would then suspect tobacco smoke as a cause of cancer in the pyriform sinus if it could be demonstrated to you that smoke does get into the pyriform sinus?")

MR. FIELD: I will withdraw it. Thank you, because the way that came out it just didn't make sense.

Q (By Mr. Field) If it could be demonstrated to you that smoke got into the pyriform sinus, tobacco smoke, would you then change your opinion with respect to whether or not you would suspect tobacco smoke as being the cause of cancer in the pyriform sinus?

A No, sir.

Q Still wouldn't change it?

A No, sir.

Q Why?

A Well, I don't suspect it as a cause of cancer of the larynx, and I know it goes down there. I don't see why I should suspect it as a cause of cancer of the pyriform fossa.

Q Oh, I see. All right. Would you consider it a suspect, to use the language of the Philip Morris counsel, if you were asked to assume that smoke did get into the pyriform fossa?

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T25s84

A Yes, sir.

Q You would consider it a suspect?

A Yes, sir.

Q And, of course, it is true, is it not, Dr. Proud, that one swallows about a pint of saliva or more a day?

A I don't know about the amount of swallowed saliva, counselor.

Q You have never made an estimate of that?

A No, sir.

Q Have you conferred with Dr. Clerf in this case at all --

A No, sir.

Q -- one of the defense witnesses?

A Conferred with him?

Q Yes.

A I have seen him in town, yes, sir. I haven't conferred with him about saliva.

Q On this case?

A We have --

Q You didn't confer with him?

A -- chatted, but we haven't held any consultation back and forth about the case.

Q And did you have any conference with Dr. Clerf on whether or not some air could get in the pyriform sinus in the process of smoking?

A No, sir, but I saw the testimony that he gave in the Kansas

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T25s85

City Star or the Times, one or the other, in which he said that a small amount, I believe, he said a small amount.

Q Yes. And you don't agree with that?

A No, sir, I do not.

Q No, he just said he didn't know how much. By the way, you use surgical charts out there, don't you, and medical charts to teach?

A Occasionally.

Q You do know the Angstrom Company as a maker of standard medical charts, don't you -- Nystrom Company of Chicago?

A Yes, sir.

Q Would you speak so she --

A Yes, sir.

Q I don't mean to harass you, Doctor, but, you see, she is not looking at you.

A I will try to project better, counselor.

Q And it won't -- Well, then, I would like to show you this Nystrom chart, which has been introduced in evidence during Dr. Clerf's testimony as Plaintiff's Exhibit 54, and ask you to look at this figure over here (indicating). Would you come over here? Do you see this cross-section of the neck?

A I can certainly see the tongue. That is quite a tongue.

Q Yes. Well, of course, it is not as big as this larynx,

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T25s86

is it?

A When was this chart made? 1918?

Q Yes, sir. Has the human larynx or tongue changed in any way since 1918?

A No, but apparently the artists have improved.

Q So you don't agree that this is a reasonably accurate cross-section of the neck?

A No, sir. I couldn't be interested in that chart, counselor. It is very poor.

Q Very poor. Well, have you discussed that chart with plaintiff's counsel at all?

A No, sir.

MR. HARDY: Plaintiff's counsel?

Q (By Mr. Field) Defendant's counsel.

A No, sir.

Q Never had any mention about any chart?

A No, sir.

Q And none of the associates talked with you?

A No, sir.

Q You never --

MR. HARDY: Staff you call them.

MR. FIELD: Well, all right, staff.

Q (By Mr. Field) None of the staff talked to you about the fact charts were being used?

A No, sir.

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T25s87

Q You never heard about the chart?

A No, sir.

Q And didn't read any of the testimony of the doctors that had preceded you?

A Read any of the testimony? I read the paper every morning and every evening since the trial.

Q That isn't testimony. That is just the paper's reporting. Have you read any of the testimony, printed-up transcribed testimony of any of the doctors that preceded you?

A I didn't even know that any of it was available to read, counselor.

Q O.K.

A No, sir, I most certainly haven't.

Q The reason I ask, it is rather curious that Dr. Clerk, the first defense witness, said it is reasonably accurate. The rest of you are all saying it is phony.

MR. HARDY: I object to his arguing the case and request that the jury be instructed to disregard the comment.

THE COURT: The objection is sustained and the jury is instructed to disregard counsel's comment.

MR. FIELD: All right.

Q (By Mr. Field) What does the word "pyriform" mean, Doctor?

A Pear-shaped.

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T25s89

Q Pear-shaped?

A Yes, sir.

Q Or triangular-shaped?

A Yes, sir.

Q And that is why this fossa is called a pear-shaped or triangular fossa, is that right?

MR. HARDY: If the Court please, I object to his using that chart in examining this doctor unless he establishes by the doctor that he can testify from it.

MR. FIELD: Well, I am not going to pursue that. I perhaps could. Dr. Clerf said it was a reasonably accurate chart, but --

MR. HARDY: I object to his commenting on what other doctors have said.

MR. FIELD: Your Dr. Clerf. All right, I won't pursue it.

MR. HARDY: And I might also add that that is not correct. Dr. Clerf said that part of it was a reasonably accurate portrayal of some illustration. He certainly didn't say it was an accurate chart, although Mr. Field keeps quoting him that way.

THE COURT: I think that is correct. He said it is a schematic chart.

MR. FIELD: That is what he said.

MR. HARDY: Schematic drawing.

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T25s89

MR. FIELD: That is right.

Q (By Mr. Field) When you said that this some 50 to 75 cigarette smokers, per cent of cigarette smokers, of cases of cancer of the pyriform sinus was about the same as the percentage of cigarette smokers in the population as a whole, where did you get that figure?

A Why, I just read this, I think, in a very famous medical journal; the Reader's Digest turned out some statistics on this.

Q Was that in the article entitled "Cancer by the Carton"?

A Yes, I think it was.

Q In the Reader's Digest?

A I believe that this was the one.

Q And you accepted that as authoritative, didn't you?

A No, sir, I don't. But all of my colleagues, who are interested just now in cancer of the lung and have done a tremendous amount of work with it in studying it, have told me that the average --

Q I am not interested in the hearsay of your colleagues, but I am interested in what you said when I asked first your authority, and that came from the Reader's Digest article entitled "Cancer by the Carton", didn't it?

A I don't remember whether that was the name of the article. It may well have been.

Q You said just a minute ago you thought it was. And did

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T25s90

that article, whatever the Reader's Digest title may have been, whether it was "Cancer by the Carton" or not, did that say that the percentage of smokers in the general population was 50 to 75 per cent?

A I don't recall, sir. I don't recall, counselor.

Q So this figure that Mr. Hardy asked you about, that is the same as smokers in the population generally, you really don't know what that figure is, do you?

A I know what my colleagues who work with this tell me it is, and although you are not interested in what they have to say, counselor, I am.

Q But your colleagues who work in this may be wrong?

A That is true.

Q And "Cancer by the Carton" in the Reader's Digest may be right, that is why I am not interested in what some of your colleagues say. You are absolutely right. But you don't know of any statistic-gathering agency that has announced that that is the percentage of smoking in the population at large, do you?

A No, sir.

End T25
(17 pgs)

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Q. And if I told you that only 30 percent of the women of this country smoke, according to the United States Department of Labor Statistics, you wouldn't know whether that was true one way or the other, would you?

A. No, sir.

Q. You said you don't think anyone knows the cause of cancer, but you do acknowledge that they are carcinogens, don't you?

A. Yes, sir.

Q. What is your definition of a carcinogen?

A. This is an agent which, when it comes in contact with a certain tissue, is capable of producing cell change producing tumor. We refer to these as carcinogenic agents.

Q. And by tumor you mean--

A. I believe that they have produced not only malignant tumors, cancers, but benign tumors as well.

Q. But carcinogen, the very name refers to carcinoma, doesn't it?

A. Yes.

Q. Not a benign tumor?

A. Correct.

Q. So carcinogen refers to an agent that causes or produces a malignant, cancerous tumor, doesn't it?

A. Yes, sir.

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T26-80w

Q. And you do recognize, even though you announce you do not know the cause of cancer as a general proposition, you do recognize there are many identified and known carcinogens?

A. Yes, sir.

Q. Agents which cause or produce cancer?

A. Yes, sir.

Q. Now, among those known and identified carcinogens, agents that cause or produce cancer, is tobacco tars on the backs of animals, isn't it?

A. Yes, sir.

Q. But of course that has never been demonstrated by painting it on humans because you doctors wouldn't want to do that, would you?

A. No, sir.

Q. So you do recognize that, though you say you don't know the cause of cancer you do recognize there are certain agents that do cause it, correct?

A. Yes, sir.

Q. And alcohol has never been identified as any such agent, as a carcinogen, has it?

A. Not to my knowledge, sir.

Q. Whereas tobacco tar has?

A. Correct.

Q. And you do know, from your reading the literature and

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7-5-81w

from the surveys that have been made, that there is a strong statistical association between cigarette smoking and cancer of the larynx, by your definition, don't you?

A. Cancer of the larynx?

Q. Yes, sir.

A. I haven't seen any statistics on this, sir.

Q. You haven't?

A. No, sir.

Q. Are you familiar with the work of Doctors Wynder, Bross and Day, in the Journal of Cancer, "A Study of Environmental Factors in Cancers of the Larynx"?

A. I have read Wynder's work, yes, sir.

Q. Then you are familiar with this language? Perhaps I can refresh your recollection on it.

"This survey has demonstrated a clear association between tobacco smoking and cancer of the larynx both of the environmental and extrinsic type." Does that refresh your recollection? You said you didn't know of any literature on it.

A. Yes, sir.

Q. So there is such literature?

A. Yes, sir.

Q. "There were significantly more non-smokers and light smokers among the control group and contrariwise were

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T26-82w

more heavy smokers among the cancer group. The total tobacco consumption for the American larynx and lung cancer patients was very similar."

Do you happen to agree with that conclusion expressed, that there is a strong association between smoking and cancer of the larynx?

A. Well, I can't say that I agree with the conclusion. It is what he said. It isn't a question of whether I agree with it or not.

Q. Do you know any statistical studies in the literature that contradict this?

A. No, sir.

Q. Are you familiar with the work of Hammond and Horn?

A. No, sir.

Q. Are you sure?

A. No, sir.

Q. Well, specifically, Doctor, you mean you are not familiar with the work printed in the Journal of the American Medical Association in 1958, "Smoking and Death Rates, Report on 44 months of Follow-up of 187,783 men," by E. Cuyler Hammond and Daniel Horn?

A. No, sir.

Q. You have never read that?

A. No, sir.

Q. Are you familiar with the published work of Dorn on

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T26-83w

over 200,000 American males that were the insurance risks of World War I and II, as he has published, on smoking and cancer?

A. No, sir.

Q. You have never read that?

A. No, sir.

Q. Involving 200,000 American males?

A. No, sir.

Q. Are you familiar with the paper by Dean F. Davies, the Administrator for Research on Lung Cancer, entitled, "A Review of the Evidence on the Relationship between Smoking and Lung Cancer"?

MR. HARDY: May I ask a question for the purpose of making an objection?

THE COURT: Yes.

MR. HARDY: Do you purport to be an expert in lung cancer such as Dorn and Hammond?

A. No, sir.

MR. HARDY: Then I object to the question about lung.

MR. FIELD: Wait a minute. Dorn and Hammond were on larynx cancer. But he said he never read the paper. Don't say they are confined to lung cancer.

MR. HARDY: Is this lung cancer?

MR. FIELD: This is lung cancer here.

MR. HARDY: Then I object for the reason I

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just stated to his questioning the doctor about Dean Davies "Review of the Evidence on Lung Cancer."

MR. FIELD: I first asked him if he has read it.

A. No, sir.

MR. HARDY: Then I object--

A. I don't follow the literature on the lung, cancer of the lung.

Q. (By Mr. Field) Well, you apparently don't follow the literature on the larynx.

A. I was familiar with Wynder's paper.

Q. But you are not familiar with Hammond and Horn's Study of 187,000 American Males, and the larynx data therein contained?

A. No, sir.

Q. Or Dorn?

A. No, sir.

Q. You say you only follow the data on larynx. Are you familiar with the larynx data reported in Sadowsky, Gilliam and Cornfield under the title of "The Statistical Association between Smoking and Carcinoma of the Lung"?

A. No, sir.

Q. You don't know about the larynx data reported in there?

A. No, sir.

Q. Or did you know that the National Institutes of Health

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instituted a survey in 1938 to 1943--

MR. HARDY: Just a minute, there is no evidence of this yet, Your Honor. If he has an article he wants to use, use the article.

MR. FIELD: I am going to ask him.

MR. HARDY: He is making a speech without an article.

MR. FIELD: We will see, Mr. Hardy.

MR. HARDY: He just said he wasn't familiar with that article he is now attempting to refer to.

THE COURT: Yes, I think you should confine your question to any article that you might have in mind.

MR. FIELD: All right, Judge.

Q. (By Mr. Field) Doctor, how much have you charged the defendant for the work you have done for them up until the time you testified?

A. I received your letter, Counselor--

Q. Yes, every doctor did.

A. --telling me you were going to ask me about this, and I have searched all of my records and I simply cannot find where I have made a charge to the plaintiff or anyone in connection with this case at all.

Q. Well, you certainly wouldn't charge the plaintiff.

A. Sir?

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26-86w

- Q. You certainly wouldn't charge my client?
- A. I am sorry, I guess I misunderstood your question. Would you restate it?
- Q. I want to know howmuch you have been paid by the defendant. Obviously the plaintiff isn't paying you a dime. We don't have any connection with you. But how much have you been paid by the defendant, the Philip Morris Company up to now?
- A. I couldn't find any records of having received anything from them, sir. I don't think that I have.
- Q. You don't think you have charged them?
- A. No, sir. I may have. I may be wrong about this, but I haven't found it.
- Q. Well, all right, Doctor. Have you had conferences with them?
- A. Yes, sir.
- Q. Were you in on the big Muehlebach conference in April of this year?
- A. Muehlebach conference?
- Q. Yes, sir, the big Muehlebach conference when there were six of the staff present, including two lawyers from New York.
- A. Yes, sir.
- Q. And a doctor from Washington, D. C., and three doctors from St. Louis?

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T25-87w

A. Yes, sir.

Q. Now, the doctor from Washington, D. C., forgot about you. He said you weren't there. But you were there, weren't you?

A. I don't know who the doctor from Washington, D. C., is.

Q. Your old friend?

A. Oh, Dr. Stowell?

Q. Yes, sir. He said he was your friend.

A. I don't recall that he was there. I remember Dr. Ackerman, I saw Dr. Ackerman.

Q. And Dr. Ogura? You would never forget him?

A. Yes, and Dr. Clerf, but I don't remember Dr. Stowell being there.

Q. And Dr. Clerf was there at the April conference, the big Muehlebach conference?

A. Yes, sir.

Q. Well, he was there, up from St. Petersburg?

A. Yes, sir.

Q. Let's see, who do you remember that was at the Muehlebach conference in April? Yourself, Ogura, Clerf, from St. Petersburg. Who else? Was Rigdon up from Texas?

A. I don't know Dr. Rigdon, I don't think.

Q. You would know whether or not he was there, wouldn't you?

A. Yes, sir.

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T26-88w

Q. It wasn't such a big conference that you didn't know everybody that was present?

A. No, sir.

Q. Well, who else was there?

A. I think that Dr. Ackerman was there.

Q. And Dr. Ogura?

A. Yes, sir, and Dr. Clerf.

Q. Dr. Clerf, and your friend from Washington?

A. Dr. Ogura.

Q. No, your friend from Washington, D. C.

A. I don't remember Dr. Stowell being there.

Q. Well, he has testified and said he was.

A. Well, maybe we were there on different days, Counselor.

Q. Oh, it may have been a 2-day conference?

A. I don't know.

Q. Well, I wouldn't be surprised.

A. I was only there for part of a morning.

Q. I see. But at least you don't remember your friend being there on the day you were there?

A. No, sir.

Q. All right. And didn't you charge them for that conference?

A. I haven't yet, no, sir.

Q. Well, that took you away from your teaching duties and your clinical practice?

A. The only possible charge I might have made, Counselor,

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T25-89w

was for the examination that I made of Mr. Ross for them, and I can't recall whether I charged them a fee, and I am glad you called it to my attention, if I didn't make a charge; this just isn't like me.

Q. Doctor, you have been glad for a month, because I called it to your attention a month ago when I wrote you.

A. Well, I know. That is why I say I am glad you did.

Q. Well, you haven't been too glad, because you haven't billed them, have you?

A. Not yet, sir.

Q. No. Now, what would you say a reasonable charge was and what are you going to charge them for your participation in the big Muehlebach conference?

A. I don't plan--I don't really know, Counselor, I will have to get my time together, find out what days I have missed and make up my mind and send them--

Q. I mean just the big Muehlebach conference.

A. I don't know, I haven't decided yet.

Q. You have no idea?

A. No, sir.

Q. How much do you charge a day when you are taking off in consultation?

A. I have never taken off before.

Q. You did for the Muehlebach conference.

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T26-90w

A. Well, I mean before this case.

Q. Oh, you haven't?

A. I haven't charged them for that, Counselor.

Q. And today you have been immobilized all day, haven't you?

A. I am on vacation, Counselor.

Q. Oh, you are another one on vacation. Well, you are not going to charge them for cutting in on your vacation? Is this going to be free to Philip Morris?

A. I will enter a fee, yes, sir.

Q. How much?

A. I don't know, sir, I haven't decided.

Q. Haven't any idea?

A. No, sir.

Q. Hasn't it been suggested to you after you got my letter, by some of the staff, that you should never acknowledge how much you were going to charge for testifying?

A. No, sir, nothing like this was said to me.

Q. Hasn't even been intimated?

A. No, sir.

Q. You didn't take the letter to them and say, "What should I say about this? He has written me, he wants to know"?

A. The only reason I contacted them about this was because I thought I surely would have been sensible enough to

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T26-91w

submit a fee for the examination of Mr. Ross, and I asked him to please check with the other law office that had it at that time to find out whether I had received any fee, because I knew you would be unhappy with me if I said I hadn't received one when I had. But they were unable to find any record of a fee that I charged and, Counselor, I can only say this, that I don't charge 80 percent of the people that I take care of.

Q. But, Doctor, you are sure going to charge Philip Morris? They are not indigent, they are not a public charge yet.

A. A lot of the patients that I take care of aren't indigent either, Counselor.

Q. Yes, but certainly you are going to charge the Philip Morris Company?

A. I imagine so.

Q. So the fact you don't charge some poor people doesn't have anything to do with it, does it? Now, you did call them after you got my letter then?

A. I called them to ask them to check for me.

Q. Check what for you?

A. To see if the previous law office that had this case in defense for Philip Morris had paid me anything, because I couldn't remember receiving anything for it

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T26-92w

and I asked them to check it to see.

Q. And that is all you did?

A. Yes, sir.

Q. You didn't ask them, "What should I say when he asks me about my fee?"

A. No, sir.

Q. O. K. Are you any one of the doctors that, in the Philip Morris ads in the 30's and 40's that have been introduced in this case, where it is represented that "Eminent medical authorities in authoritative medical journals say that Philip Morris offers real protection," and that "It is proved conclusively to remove irritation or definitely improve it," or that "Philip Morris is 235 percent less irritant than the four other national brands," are you one of the doctors allegedly reported there?

A. No, sir.

Q. You don't know anything about that?

A. No, sir.

MR. FIELD: Thank you, Dr. Proud. You still don't know what you are going to charge them for testifying?

A. No, sir.

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T26-93w

REDIRECT EXAMINATION

BY MR. HARDY:

Q. Doctor, the larynx area that Mr. Field was asking you if you knew Dr. Wynder's work--

A. Yes, sir.

Q. Tell the jury, when you first knew Dr. Wynder, what you were doing and what he was doing.

A. I was on the faculty at Washington University and he was a medical student.

Q. And do you accept Dr. Wynder as an authority in this field?

A. I most definitely do not.

End 26

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Q Now, Doctor, this Muehlebach conference--sounds like a summit conference--

MR. FIELD: It sure was.

Q (By Mr. Hardy) I wanted to ask you if you remember, Doctor, that--

MR. FIELD: Who was Khrushchev?

MR. HARDY: You, as near as I can tell.

Q I want to ask you if you remember that I was in a trial of a lawsuit and you didn't even meet me then; do you remember that?

A I don't remember whether I did or not, sir.

Q Do you remember--

A I wasn't there very long.

Q Do you remember ever meeting me before about a week before this trial started, when I came over to the K. U. Medical Center and introduced myself to you?

A No.

MR. HARDY: That is all, thank you.

RECROSS-EXAMINATION

BY MR. FIELD:

Q But you were at the Muehlebach conference?

A Yes, sir.

Q Before you are all through--I have no more questions--can't you give the jury any idea what you are going to charge?

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t27a29

A No, sir.

Q Can't even tell them within a thousand dollars?

A No, sir.

MR. HARDY: Your Honor, I object--

MR. FIELD: Okay, that is all. He answered the question.

THE COURT: Is Dr. Proud excused by both sides?

MR. HARDY: Do you excuse Dr. Proud?

MR. FIELD: Yes, indeed, as far as I am concerned. You can get him off the payroll.

(Witness excused)

THE COURT: I would like to ask counsel for both sides if it is still your opinion that we can complete the case next week.

MR. FIELD: I would think so, Judge, yes, indeed.

MR. HARDY: I would think so. I don't have any idea of dragging our case out. We have only had three days, but I think it is--

THE COURT: Members of the jury, we will shortly recess this case until 9:30 a.m. Monday morning.

For your information, I would like to say that it is the best estimate of counsel for both sides that the case will be completed next week. Of course if we have to meet on Friday of next week to complete the case,

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we will do so. The Court would like to complete it next week and I think counsel for both sides would. I just give you that information so that you can make your plans accordingly.

MR. HARDY: I would like to state for the benefit of the jury, Your Honor, that it is my sincere hope and expectation to make that unnecessary. Of course we can't tell for sure; we can't tell if we will get through the payroll then.

MR. FIELD: I figured you would get that in. I don't think I have to respond to that, do I?

THE COURT: No.

Members of the jury, the Court again cautions you during the week-end interval and until we reconvene, in accordance with the other cautions and instructions, not to discuss this case with anyone, not to read any articles concerning the case that might appear in the paper nor listen to any telecast or broadcasts where the case would be mentioned, if there be such telecasts or broadcasts.

It is the Court's hope that you will have a very nice week end.

We will adjourn the case until 9:30 Monday morning.

(Adjournment)

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end
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